IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.61 OF 2005

Gandhi Industrial Corporation ... Petitioners

v/s

The General Manager, India Security Press, Nashik, Nashik 422 101 ... Respondents

Mr Shailesh Shah i/b M/s Thakordas and Madgavkar for Petitioners.

None for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 3RD OCTOBER 2005.

P.C. :-

1. By this petition, the petitioners challenge the award on two grounds viz. that the amount of Rs.50,64,155/- awarded by the Arbitrator to the respondents towards wrongful deduction of the value of MODVAT credit should not have been awarded and it should have been awarded as the price of the services rendered and as this finding recorded by the learned Arbitrator is wrong, the learned Arbitrator has declined to grant interest under the provisions of Interest on Delayed Payments to Small Scale Ancillary Industrial Undertakings Act 1993. According to the petitioners, the amount was not being claimed by claim No.3 as return of MODVAT benefit but it was being claimed as price of the services rendered. The learned Arbitrator recorded a wrong finding that it is return of MODVAT benefit and therefore, declined to grant interest on that amount. perusal of the statement of claim filed by the petitioners shows that under claim No.3, an amount of Rs.51,48,468/- was claimed under the MODVAT scheme. Perusal of the entire claim No.3 shows that what was being claimed by the petitioners was return of the MODVAT benefit. It is submitted that under the tender terms, there was no clause which provided that the supplier would be required to pass on MODVAT credit

received under the MODVAT scheme. The claim of the petitioners was for refund of the amount which was deducted from the bills by the respondents under the MODVAT benefit. On the basis of this claim, the learned Arbitrator therefore, after examining the MODVAT scheme held that the respondents were not entitled to deduct the amount of MODVAT benefit. Therefore, I do not find any substance in the submission that the claim was not made by the petitioners as the return of MODVAT benefit but it was the claim for price of the services rendered.

2. The second challenge to the award is that because the officers of the respondents had agreed to give a contract for ten years' duration, the petitioners had quoted lower price and ultimately as the contract was not given for ten years, the respondents are entitled to receive payment at a higher rate. The learned Arbitrator has rejected this claim by observing that there is no evidence on record led by the petitioners to show that the petitioners had quoted any lower rates because of the alleged contract for ten years. The leaned Arbitrator has noted that admittedly, there is no contract given for ten years. For claiming any compensation in this regard, the burden of proof was on the petitioners to lead evidence as to what would have been the rate quoted by them had they not been under the impression that they would be given contract

for ten years. In any case, I find that the respondents being instrumentality of the State were in law not capable of awarding contract to the petitioners for ten years without inviting bids. Taking overall view of the matter therefore, I find that the award is in accordance with law and does not require any interference at the hands of this Court. Therefore, petition is dismissed with no order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.